

7.10 (17A,455A) Prehearing procedures.

7.10(1) *Motions.*

a. General. All motions, except those made orally on the record during a hearing, shall be in writing and shall state with particularity the grounds therefor and the relief or order sought, and shall be filed with the presiding officer and contemporaneously served upon all parties.

b. Response to motions. Any party may file a response to any written motion within ten days after service of the motion, except as otherwise provided by the presiding officer. Failure to file a response within the designated period may be deemed a waiver of objection to the granting of motion.

c. Disposition. The presiding officer shall rule on a motion after the designated time for response has expired. A motion involving separate grounds or parts shall be disposed of by separate ruling on each and shall not be sustained or overruled generally.

7.10(2) *Discovery.*

a. In general. The discovery procedures available to parties in civil actions are available to parties.

b. Departmental records in general.

(1) The records of the department are available for public inspection, as required by Iowa Code chapter 22 and as provided in 561-Chapter 2.

(2) Except as provided in 7.10(2)"c," identifiable departmental records that are not available for public inspection but that are discoverable and relevant to disputed material facts shall, upon request, promptly be made available to a party. However, these records may be protected from further disclosure by order of the presiding officer.

c. Prior statements or reports of witnesses. When a party relies on a witness who has made prior statements or reports with respect to the subject matter of the witness's testimony, it shall, upon request, make the statements or reports available to a party for use on cross-examination unless the statement is confidential under 561-Chapter 2. If the statement or report is confidential under 561-Chapter 2, it may be made available, but it may be made subject to a protective order.

d. Disclosure of evidence and witnesses. At a prehearing

conference or within some reasonable time set by the presiding officer prior to the hearing, each party shall make available, upon request, to the other parties the names of expert and other witnesses the party expects to call, together with a brief narrative summary of their expected testimony and a list of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents or exhibits may be added and narrative summaries of expected testimony amended upon motion by a party. However, witnesses, documents or exhibits may be added following a prehearing conference held in accordance with subrule 7.10(4) only if the moving party can show that they were not readily identifiable with reasonable diligence prior to the prehearing conference and that the addition is necessary to prevent manifest injustice.

7.10(3) *Subpoenas.* Subpoenas shall be issued to a party on request after commencement. Requests shall be made to the presiding officer.

7.10(4) *Prehearing conference.*

a. Matters considered. After filing of the pleadings, the presiding officer may, and shall upon the request of one of the parties, direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider, so far as is applicable to the particular hearing:

(1) The possibility or desirability of waiving any provisions of this chapter or of Iowa Code chapter 17A by written stipulation representing an informed mutual consent;

(2) The necessity or desirability of amending pleadings;

(3) Agreeing to the admission of facts, documents or records not controverted, to avoid unnecessary introduction of evidence;

(4) Limiting the number of witnesses;

(5) Settling on facts of which the presiding officer is to be asked to take official notice;

(6) Stating and simplifying the factual and legal issues to be decided in the contested case;

(7) The procedure at the hearing;

(8) Other matters which may aid, expedite or simplify the

disposition of the proceeding.

b. Stipulations. Since stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached, including all material facts that are not or should not fairly be in dispute.

c. Privilege. Facts disclosed in the course of the prehearing conference are privileged and, except by agreement, shall not be used for or against participating parties either before the hearing, during the hearing, or elsewhere unless fully substantiated by other evidence.

d. Order or statement of agreement. Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter upon a written stipulation as to the matters or agree to the statement thereof made on the record by the presiding officer.

e. Objections. When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed to the parties to present objections on the ground that it does not fully or correctly embody the agreement at the conference. Thereafter, the terms of the order or modification shall determine the subsequent course of the proceedings relative to matters it includes, unless modified to prevent manifest injustice.

7.10(5) *Intervention.*

a. Petition. A person who may be aggrieved or adversely affected by the disposition of a case may file a petition for leave to intervene in that case. The petition shall set forth the grounds for the proposed intervention, the position and interest of the petitioner, and the likely impact intervention would have on the expeditious progress of the case. Any person already a party in the case may file an answer to a petition to

intervene, making specific reference to the factors set forth in 7.10(5) "a" and 7.10(5)"c" within ten days of receipt of the petition.

b. Filing and service. A petition for leave to intervene shall be filed and contemporaneously served upon all parties in the case before the prehearing conference, or in the absence of a prehearing conference, no later than 20 days prior to the date for which the contested case hearing is scheduled. Any petition filed after this time shall include, in addition to the information required in 7.10(5)"a," a statement of good cause for failure to file in a timely manner. An untimely petition for leave to intervene shall be granted only upon finding that circumstances justified the untimely filing; and the intervenor shall be bound by any agreements, arrangements, and other matters previously made in the case.

c. Disposition. Leave to intervene shall be granted only if the petitioner demonstrates both that common questions of law or fact exist and that intervention would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties. In evaluating the merits of the petition for leave to intervene, the presiding officer shall consider the extent to which the interests of the petitioner will be adversely affected by a final order and the extent to which the interests of the petitioner are not being adequately represented by the original parties.

7.10(6) *Consolidation and severance.*

a. Consolidation. The presiding officer may, with or without motion, consolidate any or all matters at issue in two or more cases where there exist common parties or common questions of law or fact, and where consolidation would expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

b. Severance. The presiding officer may, with or without motion, for good cause shown, order any case severed with respect to any or all parties or issues.

561-7.10

EPA Rulemakings

CFR: 40 C.F.R. 70, Appendix A, Iowa (a)

FRM: 60 FR 45671 (9/1/95)

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Description: EPA approved a new chapter "Rules of Practice in Contested Cases." This chapter governs procedures in contested cases generally including appeals of administrative orders, appeals of license or permit conditions, license or permit denials or suspensions. This chapter was approved in conjunction with Title V rules.

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Difference Between the State and EPA-Approved Regulation

None.